

(S E R V E D)
(MARCH 20, 1996)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

March 20, 1996

DOCKET NO. 95-10

PUERTO RICO SHIPPING ASSOCIATION

v.

PUERTO RICO PORTS AUTHORITY

**SETTLEMENT APPROVED;
COMPLAINT DISMISSED WITH PREJUDICE**

This proceeding began with the filing of a complaint by the Puerto Rico Shipping Association (PRSA), an unincorporated association consisting of 39 members who are common carriers by water in the interstate and foreign commerce of the United States, other ocean carriers, vessel agents, tugboat operators, and other entities engaged in the maritime industry at the port of San Juan, Puerto Rico and other Puerto Rican ports. The respondent Puerto Rico Ports Authority (PRPA) is a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico created by the Puerto Rican

legislature. PRPA is charged to develop, maintain and supervise the ports of the commonwealth of Puerto Rico and furnishes facilities and services at Puerto Rican ports in connection with common carriers by water in the interstate and foreign commerce of the United States.

Under its tariff duly filed with the Commission, PRPA assesses and collects various charges for a number of services or activities, including wharfage and dockage rates and fees. On April 5, 1995, pursuant to a resolution of PRPA's Board of Directors, PRPA announced increases in its rates and charges to become effective July 1, 1995. Complainant alleged that these increases on wharfage and dockage rates and fees on various commodities ranged from some 54 to over 220 percent for 1996 over the 1995 rates with the average increase being 78.67 percent. Complainant alleged furthermore that the increases would be even higher for 1997. Complainant alleged that the rate increases were "arbitrary and excessive" and would bear "no relationship to the services, facilities and benefits made available by the Ports Authority to common carriers by water and other users of marine terminal facilities in the Port of San Juan." Complainant alleged that by raising its rates and fees, PRPA would subject users of marine terminal facilities to undue and unreasonable prejudice and disadvantage, in violation of section 16 First of the Shipping Act, 1916, 46 U.S.C. app. sec. 815 First, and section 10(b)(12) of the Shipping Act of 1984, 46 U.S.C. app. sec. 1709(b)(12). Furthermore, complainant alleged, such action evidenced a failure by PRPA to establish, observe and enforce regulations and practices that are just and reasonable relating to the handling of property, in violation of section 17 of the 1916 Act, 46 U.S.C. app. sec. 816, and section 10(d) of the 1984 Act, 46 U.S.C. app. sec. 1709(d). In

addition, complainant alleged that PRPA violated Puerto Rican law by failing to afford timely public notice of its intentions to raise its rates and charges, as required by that law, and in so doing, also violated section 17 of the 1916 Act and section 10(d) of the 1984 Act. Finally, complainant alleged that the Association and its members suffered actual injury and sought a cease and desist order and an award of reparation for such injury in an amount to be later determined at hearing.

In its answer, filed on September 13, 1995, respondent PRPA denied the alleged violations of law. Furthermore, PRPA argued that the Commission proceeding should be stayed or dismissed because of a pending administrative proceeding in Puerto Rico dealing with the subject dispute, contended that the subject rate increases were much lower than complainant had alleged, that the Commission has no jurisdiction over matters falling under Puerto Rican law, that respondent had in fact complied with that law, that a Puerto Rican court had already dismissed complainant's identical claim as being time barred, and other things.

In addition to the complaint and answer, both parties filed motions. Respondent asked that the proceeding be stayed or dismissed, citing, among other things, alleged deficiencies in the complaint, lack of Commission jurisdiction over Puerto Rican law, substantial losses, and an ongoing administrative proceeding in Puerto Rico. Subsequently, respondent filed another motion attacking complainant's establishment of a special "Escrow Fund" by which complainant's members, by agreement, would deposit moneys otherwise owing to PRPA in an escrow account pending resolution of the issue of the lawfulness of the subject marine terminal rate increases. Complainant filed its own motion claiming that

an item in respondent's tariff (Item 9) relating to the imposition of fines or criminal penalties for failure to comply with respondent's tariff, by itself constituted an unreasonable practice, in violation of section 17 of the 1916 Act, according to Commission case law. However, because the parties advised that they were entering into settlement discussions, I stayed the instant proceeding and deferred ruling on the motions pending results of their discussions. These discussions have borne fruit with the result that the parties have submitted the instant motion seeking approval of the settlement agreement and dismissal of the complaint.

The Joint Motion and Settlement Agreement

The parties have submitted a joint motion together with the text of their Settlement Agreement. The joint motion consists of 10 pages summarizing the terms of the Agreement and furnishing supporting justification for its approval with relevant case citations. As explained by the parties, their Agreement terminates litigation before three different tribunals, in which not only complainant Association and respondent Authority are involved but also, for two of the three proceedings, another organization known as the Florida Caribbean Cruise Association (FCCA) is involved. The FCCA is a party to the proceedings before respondent PRPA's hearing officer and also before a Puerto Rican court.

The Settlement Agreement is a long and detailed document consisting of 18 paragraphs covering some 21 pages plus attachments. It has been filed as an attachment to the motion and is summarized in these rulings. The full text is attached to these rulings as an appendix. As explained by the parties in their motion, the Agreement is conditioned

upon the Commission's approval and dismissal of the complaint with prejudice and a "closing" of the Settlement to be accomplished 10 business days after the FMC's approval becomes final, at which time individual members of complainant Association and other users of PRPA's facilities will be afforded the opportunity to execute and subscribe to the terms of the Settlement Agreement in their individual capacities. As shown by the Agreement itself and by the parties in their motion, their Agreement adjusts the subject tariff rate increases downward to an acceptable level and enables the users of PRPA's facilities to square their accounts with PRPA. It also terminates their disputes concerning complainant Association's establishment of the "Escrow Fund" that delayed or withheld payments to PRPA because of the contested rate increases and eliminates PRPA's tariff Item 9, which complainant had contested because it provided for criminal penalties against users of facilities who failed to comply with tariff provisions. Furthermore, the Agreement terminates disputes and litigation concerning certain maritime rental increases, which disputes were not involved in the instant complaint proceeding and establishes a joint committee to address issues of mutual concern involving future tariff ratemaking procedures and rates and possible redistribution of maritime lands at the Puerto Nuevo Terminal in San Juan, Puerto Rico.

With respect to the payment of wharfage and dockage, which rates were raised by an amount to which complainants objected, under the Agreement, complainant's members and other users would pay a lowered increase in rates for the balance of Fiscal Year 1996 (which ends June 30, 1996) and for FY 1997 (ending on June 30, 1997). The agreed revised rates are calculated to yield PRPA an additional \$7 million in revenue in each of the fiscal

years over the revenue actually realized in FY 95.¹ In addition, PRPA would assess certain surcharges which would terminate at the end of the respective fiscal years. Absent any further rate changes by PRPA, the rates which would continue in effect after June 30, 1997, would be the base FY 97 rates.

As to the wharfage and dockage fees and charges that may not have been paid in full under the rate increases which gave rise to the filing of the complaint, the parties have established a procedure by which any rate payer will pay PRPA at rates found acceptable by the parties, which payments have been delayed because of the pending proceeding dealing with complainant's objections to PRPA's original rate increases. Under the procedure established, a "Settlement Payment" will be calculated and paid at "closings" at which individual members of the complainant Association and other users subscribing to the Agreement will straighten their accounts with PRPA. The settlement payment will be based upon the difference between the amounts the users actually paid to the Authority during the disputed period after July 10, 1995, when the contested tariff increases went into effect and the amounts which would have been paid during that period under the now-agreed upon lower rate increases, which will be duly filed in PRPA's tariff. In case of disputes over the amounts owed, the Agreement provides for an informal arbitration. The "Escrow Fund," which, as mentioned earlier, provoked an objecting motion by PRPA, would be terminated

¹In August 1995, respondent PRPA had moved for a stay or dismissal of this proceeding. Among other things, PRPA contended that it had sustained net losses of over \$33 and \$36 million in its fiscal years 1993 and 1994, respectively. PRPA contended that it was required by Puerto Rican law to cover at least its development and operating costs and its bond principal and interest payments but that its losses caused its bond ratings to be downgraded below investment grade status, thus preventing PRPA from financing its capital improvement program. PRPA contended that its maritime tariff rates were insufficient to cover its maritime operating costs, and therefore its Board of Directors decided upon tariff rate increases, which increases became effective on July 10, 1995.

as of the date of the complainant Association's "closing." This procedure would settle outstanding disputed accounts between complainant's members (and other users of PRPA's terminal facilities subscribing to the Agreement) and PRPA and eliminate the need for rate payers either to pay the disputed rate increases and sue later for reparations or to defend the legality of the Escrow Fund.

Discussion and Conclusions

In the leading case of *Old Ben Coal Company v. Sea-Land Service, Inc.*, 21 F.M.C. 505, 512 (1978), the Commission stated:

It is well settled that the law and Commission policy encourage settlements and engage in every presumption which favors a finding that they are fair, correct, and valid. (Case citations omitted.)

The Commission further explained the reason for the above policy in *Old Ben* as follows (*Id.*):

The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy. (Citations omitted.)

Settlements are presumed to be fair, and the Commission has a relatively limited role to perform when scrutinizing them. However, the Commission has made clear that it "does not merely rubber stamp any proffered settlement. . . ." (*Id.*) The Commission's role is described as follows (*Id.* at 513):

If a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.

The Commission further described its role in approving settlements in *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia-New Zealand Conference and Columbus Line, Inc.*, 24 SRR 1129, 1134 (ALJ), F.M.C. notice of finality, September 19, 1988, as follows:

Generally, when examining settlements, the Commission looks to see if the settlement has a reasonable basis and reflects the careful consideration by the parties of such factors as the relative strengths of their positions weighed against the risks and costs of continued litigation. Furthermore, if it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with the law the Commission authorizes the settlement.

The Commission's policy favoring settlements is consistent with the Administrative Procedure Act (APA) and with a recent statute encouraging alternative means of resolving disputes, and the Commission has amended its rules of procedure to facilitate these policies. See discussion in *Great White Fleet, Ltd. v. Southeastern Paper Products Export, Inc.*, 26 SRR

1487, 1488 (ALJ, F.M.C. notice of finality, September 21, 1994). As noted in the case cited, the Commission has over the years approved countless settlements in a variety of contexts under various provisions of the 1916 and 1984 Shipping Acts. (*Id.*) In some instances the Commission has approved settlements which dispose of complaint cases brought before it even when there were jurisdictional questions and when collateral proceedings were also being settled before courts. (*Id.* at 1489 n. 4, and cases cited therein.) Among the many cases in which the Commission has approved settlements and discontinued the proceeding has even been a general rate increase investigation arising under the 1916 and 1933 Shipping Acts.²

The instant Settlement Agreement qualifies for approval under the principles and standards discussed above in many ways. First, because this is a settlement ending a dispute about the proper payments under a marine terminal tariff, it conforms to the basic principle in law that requires adherence to lawfully filed tariffs in order to prevent discrimination. As discussed, because of the disputes over the size of PRPA's rate increases, complainant withheld payment of the disputed increases and established an Escrow Fund pending resolution of the dispute. Following approval of the Settlement Agreement and the signings by individual members of the complainant Association, the rate payers will in effect make payment at the lower rate levels to be filed in PRPA's tariff and the "Escrow Fund" will terminate. Thus the policy of enforcing tariffs is served.

²The case was entitled *Sea-Land Service, Inc. - Proposed 25 Percent General Rate Increases*, 19 SRR 1470 (ALJ), adopted, 19 SRR 1499, clarified, 19 SRR 1703 FMC 1980). In the case, involving partial suspension of a carrier's rate increases, the carrier offered to reduce its proposed rate increases to 21 percent generally. The offer was accepted by the Commission and the investigation was discontinued.

Second, the Settlement Agreement serves to terminate litigation not only before the Commission in the instant complaint case but before PRPA's hearing officer and the Puerto Rican court. This termination of ancillary litigation has been recognized as a benefit of settlements and as a justification for their approval. Also by settling other claims that might have led to court or further Commission proceedings, the parties have obviated the need to consume additional judicial resources. See, e.g., *Robinson Lumber Co., Inc. v. Delta S.S. Lines, Inc.*, 18 SRR 744 (ALJ), F.M.C. determination not to review, August 28, 1978 (settles court case as well as Commission complaint case); *Accord Craft Co., Ltd. v. ANERA*, 26 SRR 1385 (ALJ), F.M.C. notice of finality, April 20, 1994 (settles arbitration proceeding as well); Docket No. 93-18 - *Alaskan Gold Sea Food, Inc. v. Fortune Network*, Complaint Dismissed, November 15, 1993 (ALJ), F.M.C. notice of finality, January 12, 1994 (unreported) (settles court case as well); *Old Ben*, cited above, 21 F.M.C. at 517 (avoids need for court proceedings). As mentioned earlier, the Settlement Agreement also removes from litigation the question whether PRPA's tariff Item 9 or complainant's "Escrow Fund" was lawful and settles matters concerning marine rentals and other unrelated rate matters.

Finally, the Settlement Agreement sets up a joint committee which includes representatives of complainant Association. This committee would, among other things, draft and recommend to PRPA's Board of Directors regulations governing future maritime ratemaking and conduct consultations not later than March 1, 1997, concerning any possible rate increase for Fiscal Year 1998. (See Agreement Paras. 10 A., 10 B., 4 (8), 4 (10).)

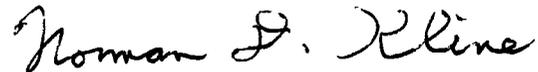
As the parties state in their joint motion, they have been negotiating their settlement for over five months (beginning on September 20, 1995). The many detailed matters

encompassed in the Agreement show that the parties have been careful and busy to terminate a number of disputes. Had the litigation continued, because of the nature of the allegations, which involved an allegation that PRPA had failed to correlate its services with its costs properly under the test enunciated by the Supreme Court in *Volkswagenwerk A.G. v. F.M.C.*, 390 U.S. 261 (1968), the case promised to become engulfed in prolonged, expensive technical hearings, not to mention the need to litigate the legality of the "Escrow Fund" and PRPA's tariff Item 9. Furthermore, the fact that two other proceedings were also underway before a PRPA hearing officer and a Puerto Rican court further increased the risks and the costs of litigation. The parties have obviously weighed these considerations and have brought peace between rate payers and PRPA while avoiding expenditure of what promised to be huge costs of litigation.

I conclude that the Settlement Agreement fully comports with the strong policy favoring such agreements and has other benefits discussed above. Furthermore, as the Supreme Court observed in *Carson v. American Brands, Inc.*, 450 U.S. 79, 86-89 (1981), parties who have achieved a settlement granting plaintiffs the relief they sought ought not to be required to delay enjoying the fruits of their settlement agreement by an obstructive lower court. In a similar vein, the court in *Smoot v. Fox*, 340 F.2d 301, 303 (6th Cir. 1964), reprimanded the lower court for refusing to allow the complainant to dismiss his complaint with prejudice when complainant asked for such a dismissal. The court found no authority or basis to force complainant into a trial that he did not want when complainant was willing to accept dismissal with prejudice.

In the instant case, complainant Association and respondent PRPA ask for dismissal of the complaint with prejudice, as their Settlement Agreement requires. (See Para. 3 A. of the Agreement.) Such a dismissal would, of course, free respondent from future litigation concerning the subject matter of the Settlement Agreement. As seen in *Smoot v. Fox*, cited above, the courts consider it an abuse of discretion to deny a complainant its right to have its complaint dismissed with prejudice. See also *Robinson Lumber Co., Inc. v. Delta S.S. Lines, Inc.*, cited above, 18 SRR 744 (complaint dismissed with prejudice in accordance with parties' settlement agreement).

Accordingly, the Settlement Agreement is approved and the complaint is dismissed with prejudice.



Norman D. Kline
Administrative Law Judge

APPENDIX

SETTLEMENT AGREEMENT

entered into by and between

PUERTO RICO PORTS AUTHORITY
G.P.O. BOX 362829
SAN JUAN, PUERTO RICO 00936-2829

and

PUERTO RICO SHIPPING ASSOCIATION
P.O. Box 6024
Old San Juan Station
San Juan, Puerto Rico 00905

FLORIDA CARIBBEAN CRUISE ASSOCIATION
2701 Ponce de Leon Boulevard - Suite 203
Coral Gables, Florida 33134

Dated March 8, 1996

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EXHIBITS:

A. MEMBERS OF THE ASSOCIATION AFFECTED BY TARIFF M-1-3

B. MARITIME TARIFF RATES

C. PRO FORMA CORPORATE AUTHORITY CERTIFICATION

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 8th day of March, 1996, by and between the **Puerto Rico Ports Authority** (hereinafter the "Authority"), a public corporation and an instrumentality of the Commonwealth of Puerto Rico, created pursuant to Act No. 125 of May 7, 1942, as amended (the "Enabling Act"), the **Puerto Rico Shipping Association**, an unincorporated association organized under the laws of the Commonwealth of Puerto Rico (hereinafter the "Association"), the **Members of the Association** set forth in Exhibit A that hereafter actually execute this Settlement Agreement, and their affiliates by virtue of controlling, being controlled by, or being under common control with such Members (the "Association Members"), the **Florida Caribbean Cruise Association**, a non-profit corporation organized under the laws of the State of Florida (the "FCCA"), and **those other persons or entities that are not Association Members and that actually hereafter execute and thereby subscribe to this Settlement Agreement**, and their respective affiliates by virtue of controlling, being controlled by, or being under common control with, such persons or entities (the "Other Users").

WITNESSETH:

WHEREAS, the Authority, by virtue of its Enabling Act, owns and/or operates certain marine facilities in the Commonwealth of Puerto Rico ("the Authority's Facilities");

WHEREAS, the Association Members and the Other Users are part of the maritime industry in Puerto Rico and are lessees and/or users of the Authority's Facilities and pay to the Authority for the use of such facilities certain charges, fees, and harbor dues ("Maritime Tariff Rates") as set forth in the Authority's tariffs on file with the Puerto Rico Department of State and the Federal Maritime Commission (the "FMC" or "Commission");

WHEREAS, the Authority by Resolution 95-16, adopted April 5, 1995, increased the Maritime Tariff Rates contained in the Authority's Tariff M-1-3;

WHEREAS, the Authority filed the revised Tariff with the Puerto Rico Department of State and the FMC, and the revised Tariff and increased Maritime Tariff Rates set forth therein became effective on July 10, 1995 (the "Revised Tariff");

WHEREAS, the Association has challenged the implementation of the Revised Tariff and the increased Maritime Tariff Rates contained therein in administrative proceedings before the Authority's Hearing Officer and in a Complaint filed with the FMC in a proceeding designated FMC Docket No. 95-10 (the "FMC Complaint"), alleging that the Tariff provisions and increased Maritime Tariff Rates violate Sections 16 First and 17 of the Shipping Act, 1916; Sections 10(b)(12) and 10(d) of the Shipping Act of 1984; the Puerto Rico Uniform Administrative Procedures Act, 3 L.P.R.A. § 2100, et seq.; and the Authority's Enabling Act, 23 L.P.R.A. § 331, et seq., and specifically 23 L.P.R.A. § 336(l)(1);




WHEREAS, the Association, for the benefit of the Association Members, established an Escrow Fund (the "Escrow Fund") for the Association Members to deposit therein the difference between the old and new increased Maritime Tariff Rates pending the resolution of the Association's challenges to the Revised Tariff:

WHEREAS, the Authority has asserted, and the Association has denied, that the establishment of, and payment by the Association Members into, such Escrow Fund is illegal and violates Puerto Rico and federal law, and the Association Members' contractual obligations to the Authority;

WHEREAS, the Administrative Law Judge (the "ALJ") presiding over the FMC Complaint stayed the FMC Docket proceedings and encouraged the parties to enter into settlement negotiations:

WHEREAS, the Association, together with the FCCA, filed a Second Amended Complaint in the Puerto Rico Superior Court, Civil No. KPE-94-0514 (now on appeal, P.R. Cir. Ct. App. No. KLAN-95-01060), challenging Resolution 95-16 and the Revised Tariff, and also Authority Resolutions 93-07, 94-61 and 94-77 regarding land rent charges, and Resolutions 93-65 and 94-78 regarding earlier marine tariff schedules containing Maritime Tariff Rates (the "Civil Complaint");

WHEREAS, the parties anticipate that a final adjudication by the FMC and the courts of all of the claims arising out of or in any way relating to the Authority Resolutions, tariffs, and rates, which are the subject of the proceedings before the Authority's Hearing Officer, the FMC Complaint, and the Civil Complaint, except as expressly reserved in Paragraph 18 below (collectively the "Association Claims"), and any claims by the Authority against the Association, the FCCA, and the signatory Association Members arising out of or in any way relating to the Revised Tariff, the increased Maritime Tariff Rates, or to the Authority's defense of the Association Claims, including the Authority's challenges to the legality and use of the Escrow Fund, except as expressly reserved in Paragraph 18 below (collectively the "Authority Claims"), may require protracted and expensive litigation;

WHEREAS, the parties have reviewed and analyzed the claims, counterclaims and defenses involved in (a) the FMC Complaint proceeding (including the Authority's challenges to the Escrow Fund), (b) the Civil Complaint, and (c) the administrative proceedings before the Authority's Hearing Officer, and the Authority's Claims, and after engaging in settlement negotiations, and to avoid the delays and expense of further litigation, agree to resolve and settle all pending claims and counterclaims between the Association, the FCCA, the signatory Association Members, and the Authority with respect to the Association Claims and the Authority Claims (collectively the "Covered Claims") according to the terms and conditions hereinafter set forth in this Settlement Agreement (hereinafter referred to as the "Agreement" or the "Settlement Agreement");





WHEREAS, the Other Users may have against the Authority claims which are similar to the Association Claims (the "Other Users Claims"), and the Authority may have against the Other Users claims similar to those included in the Authority Claims (the "Authority's Other Users Claims");

WHEREAS, the Authority desires to apply prospectively, as of the lawful effective date thereof under both Puerto Rico and federal law, and equally to all users of the Authority's Facilities, any new or revised tariff provisions adopted pursuant to this Settlement Agreement (the "New Tariff"), and to make the benefits of this Settlement Agreement equally available to all users of the Authority's Facilities upon their execution and compliance with the terms of this Agreement;

WHEREAS, the parties, as part of this Settlement Agreement, have agreed on the method for computing a monetary settlement effecting an adjustment to the amounts that each signatory Association Member and each Other User would otherwise owe the Authority for (a) the period from July 10, 1995 to the date of the Execution of this Settlement Agreement (the "Disputed Period"), and (b) from that latter date to the date the New Tariff becomes effective (the "Waiting Period") (collectively both amounts the "Settlement Payment");

WHEREAS, the Association Members and Other Users will become parties to this Agreement at the Closing, as hereinafter defined, or subsequent thereto, by executing the Agreement and otherwise complying therewith as set forth herein;

WHEREAS, upon execution of this Agreement, the Association and the Authority will jointly request the FMC, and, jointly with the FCCA, will request the Authority's Hearing Officer, to approve the same, as set forth below;

NOW, THEREFORE, in consideration of the foregoing recitals and of the respective covenants, promises, representations, and agreements set forth below, and intending to be legally bound, the parties hereto agree as follows:

1. RECITALS.

The foregoing recitals are hereby incorporated by reference as though fully set forth in this Paragraph and, as so incorporated by reference, are agreed to by the parties to this Settlement Agreement.

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2. CLAIMS SETTLED AND RELEASED.

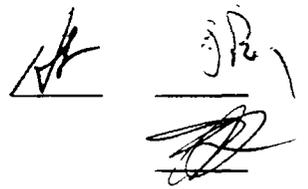
As of the successful completion of the respective Closings provided in Paragraph 5 below, and in consideration of their respective commitments and undertakings set forth in this Agreement, the Authority hereby settles and mutually releases each Signatory hereto, and each Signatory releases the Authority, and their respective officers, directors, employees, agents, representatives, predecessors, successors, affiliates, and assigns, from any and all claims, demands, actions, causes of action, suits, accounts, reckonings, debts, executions, and liabilities whatsoever, of every name and nature, whether known or unknown, except as expressly reserved in Paragraph 18 below, relating to the following claims:

- (a) All claims asserted or which could have been asserted against the Authority by the Association, the FCCA, and/or the Association Members and the Other Users, and their respective agents, employees, officers, successors, assigns, with respect to the Authority Resolutions, tariffs, and actions which are the subject of the Association Claims and the Other Users Claims.
- (b) All claims and counterclaims asserted or which could have been asserted by the Authority and its officers, agents, employees, successors, assigns, against the Association, the FCCA, the Association Members and/or the Other Users with respect to the Authority Resolutions, tariffs, and actions which are the subject of the Authority Claims and the Authority's Other Users Claims.

3. FMC APPROVAL, HEARING OFFICER AND PUERTO RICO COURT ACTIONS.

A. This Settlement Agreement is subject to approval by the FMC, and shall become null, void, and ineffective upon the issuance of a final determination disapproving or failing to approve this Settlement Agreement or any provision or portion thereof. The Association and the Authority shall join in the submission to the FMC of a Joint Motion under the FMC's Rules requesting the issuance of an Order approving this Settlement Agreement, and dismissing and discontinuing with prejudice, and without costs or attorney's fees, (a) the Association's Complaint in the FMC Complaint proceeding, and (b) the Authority's pending motions. The Association and the Authority shall submit their Joint Motion for approval to the ALJ within seven (7) business days from the date of execution of this Settlement Agreement.

B. The parties agree and covenant that upon the issuance by the ALJ of an Order approving this Settlement Agreement in its entirety as contemplated in Paragraphs 3.A and 4 of this Agreement (an "ALJ's Favorable Decision"), they will not file any further motion, petition or exceptions to the ALJ or the FMC to amend, reconsider or in any other way modify the ALJ's Favorable Decision. If the Commission, on its own initiative, determines to review the ALJ's

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Favorable Decision, the Association and the Authority shall jointly move the Commission to approve this Settlement Agreement as contemplated in Paragraphs 3.A and 4 of this Agreement.

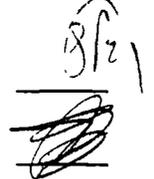
C. If either the ALJ or the FMC, as the case may be, fails to approve this Settlement Agreement, as contemplated in Paragraphs 3.A and 4, the Association and the Authority shall meet promptly with the objective of reaching a settlement agreement that may be approved by the FMC.

D. Within seven (7) business days after the execution of this Settlement Agreement, the Authority, the Association, and the FCCA shall file a joint motion with the Authority's Hearing Officer submitting the Settlement Agreement for the Hearing Officer's approval and recommendation to the Authority's Board of Directors.

E. Within three business days after the execution of this Settlement Agreement, the attorneys for the Association, the FCCA, and the Authority shall file a joint motion with the Puerto Rico Circuit Court of Appeals requesting a stay of the appellate proceedings with respect to the Civil Complaint pending the review and approval of the Settlement Agreement by the ALJ and the subsequent completion of the Closing. In the event of disapproval of this Agreement by the FMC, the parties will inform the Court of Appeals of such development and will jointly request a further stay of the appellate proceedings for a minimum additional 45 calendar days after service of the FMC's disapproval Order to permit the parties time to reach a settlement agreement that may be approved by the FMC as contemplated under Paragraph 3.A above.

F. Within three business days after the Closing, the attorneys for the Association and the FCCA shall file a joint motion with the Puerto Rico Circuit Court of Appeals and/or the Puerto Rico Superior Court, as the case may be (the "Puerto Rico Court"), requesting that the appeal and the Civil Complaint be dismissed with prejudice.

G. As a gesture of good faith, as of the execution of this Settlement Agreement, and continuing until the New Tariff becomes effective, or, in the event of disapproval of this Agreement, until 45 days after service of the Order disapproving the Agreement so as to permit the parties time to reach a settlement agreement that may be approved by the FMC as contemplated under Paragraph 3.A above, the Association Members (many of which have been paying only the old Tariff rates to the Authority and depositing the difference in the Escrow Account) will pay directly to the Authority, with respect to all outstanding invoices and any further invoices which may be issued by the Authority under the Revised Tariff until the New Tariff becomes effective, the amounts which would be due had such invoices been calculated using the New Tariff FY96 Rates, including the FY96 Surcharges (see Article 4.A(2) below) and (without waiving the Authority's position as to the legality of the Escrow Account) shall deposit the difference between that amount and the amounts due under the Revised Tariff in the Escrow Account. To facilitate this process, all Authority invoices issued more than two business days after the execution of the Settlement Agreement shall include a "provisional credit" in the amount of the difference between (1) the amounts which would be due had such invoices been calculated using the New Tariff FY96 Rates including the FY96 Surcharges, and (2) the amounts which are

due in accordance with the Revised Tariff, and shall specify the amounts due in accordance with the Revised Tariff and, after allowance as a "provisional credit," the amounts which would be due under the New Tariff FY96 rates including the FY96 Surcharges. The "provisional credit" is contingent upon the FMC's approval of the Settlement Agreement and Closing of the settlement, and shall become effective only with respect to those Association Members and Other Users which execute and comply with the terms of this Agreement. In the event the Settlement Agreement is not approved by the FMC or the Closing is not successfully accomplished, and, in any event, with respect to any members of the Association or other users of the Authority's facilities which do not subscribe to this Agreement, the full invoiced amount, without allowance for the "provisional credit," shall be due to the Authority.

4. CONSIDERATION

A. In exchange for the Settlement Payment and other consideration to be provided by the Association, the FCCA, the signatory Association Members, and the Other Users (collectively, the "Signatories"), under Paragraph 4.B of this Settlement Agreement, the Authority agrees, as to the Signatories, and upon completion of the Closing, to:

- (1) settle all claims and counterclaims asserted or which could be asserted by the Authority against the Signatories with respect to the Authority Claims and the Authority's Other Users Claims;
- (2) **no later than ten business days after the date on which the ALJ's Favorable Decision becomes final, by Resolution, approve and file with the appropriate governmental authorities the New Tariff incorporating the rates and charges set forth in Exhibit B and deleting Tariff Item 9.0, to become effective upon the later of (i) thirty (30) days after being filed with the Puerto Rico Department of State, or (ii) the successful completion of the Closing, and only in the event the Closing is completed. The New Tariff shall include charges which consist of (a) base tariff rates (the "Base Tariff") covering the following Authority fiscal years ("FY's") and containing the level of charges shown in Exhibit B: (i) from the date on which the New Tariff becomes effective (the "New Tariff Effective Date") through June 30, 1996 (the "FY96 Tariff"), and (ii) from July 1, 1996 through June 30, 1997 (the "FY97 Tariff"); and (b) a special and temporary surcharge (the "Temporary Surcharge") on the several categories of Wharfage and Dockage charges in the New Tariff (except transshipment and passenger head tax) for each of FY96 and FY97, as shown in Exhibit B. Each Temporary Surcharge shall terminate by its own terms at the conclusion of June 30th of the fiscal year to which the surcharge applies. After June 30, 1997, the FY97 Tariff rates shall continue in effect, without the FY97 Surcharge, until changed by the Authority;**




- (3) accept, from the signatory Association Members and Other Users, for the period from July 10, 1995 to the effective date of the New Tariff, and issue credits for any overpayments, a Settlement Payment determined, subject to review, audit and any subsequent adjustments, as set forth in Paragraph 7 below as if the Base Tariff and Temporary Surcharge set forth in the New Tariff for FY96 had been in effect, without assessment and collection of interest or any other penalties that may be due as a result of any prior short payment by an Association Member or Other User to the Authority during the Disputed Period on account of the disputed Maritime Tariff Rates amounts: thereafter the Authority may assess and collect interest or penalties as may be imposed by applicable rules, laws or contracts;
- (4) issue, at the Closing, subject to review, audit, and any necessary subsequent adjustment, a credit to the account of each entitled Association Member or Other User for any negative balance determined due per the Settlement Payment calculations set forth in Paragraph 7 below (the "Settlement Payment Credit");
- (5) issue credits, at or prior to the Closing, to any Association Members and Other Users who leased exclusive maritime lands during the period from September 1, 1994 through November 12, 1994 (both dates inclusive) in the amount of the increased land rent charges paid during such period based on the new \$22,500/cda. annual rate adopted per Resolution 94-77, over the amount which would have been due based upon the prior \$17,000/cda rate, which credits may be used as an offset against the Settlement Payment;
- (6) issue credits, at or prior to the Closing, to any Association Members and Other Users who were invoiced and paid the increased Maritime Tariff Rates implemented per Resolution 94-78 during the period from September 1, 1994 through January 7, 1995 (both dates inclusive), in the amount of the implemented increase (i.e., the difference between the rates implemented under Resolution 94-78 and those previously in effect), which credits may be used as an offset against the Settlement Payment;
- (7) amend the exclusive maritime land rent charges established by Resolution 94-77 (relating to the per cuerda per year exclusive land rental rate) to provide: (i) for the period of August 1, 1995 through July 31, 1996, the present annual rate of \$23,625/cda.; (ii) for the period of August 1, 1996 through July 31, 1997, \$24,806/cda.; and, (iii) for the period of August 1, 1997 through July 31, 2001, \$25,000/cda.;

- (8) as provided in Paragraph 10.A hereof, establish a Committee, which will include representatives of the Association, to draft and recommend to the Authority's Board of Directors regulations establishing procedures governing future maritime tariff ratemaking (the "Joint Tariff Committee");
- (9) as provided in Paragraph 10.B hereof, establish a Committee to make recommendations to the Authority with respect to the redistribution of lands in the Puerto Nuevo Area (the "Joint Land Committee");
- (10) no later than March 1, 1997, commence consultations with the Association through the Joint Tariff Committee as to the need for any increase in the Maritime Tariff Rates for FY98, and, within three weeks after the start of such consultations, to report the results of such consultations to the Authority's Executive Director for his and the Authority Board of Directors' consideration in connection with the Board's determination, in the exercise of its statutory powers, as to the amount of any Maritime Tariff Rate increase for FY98. So long as the Authority complies with the timetable set forth in this Subparagraph and the requirements of Puerto Rico law, the Signatories will not challenge the length of the notice of any Maritime Tariff Rate increase for FY98. For purposes of this Settlement Agreement, consult ("Consult") shall mean to provide a reasonable opportunity for the Association, through the Joint Tariff Committee, to **examine and discuss with the Authority (i) the Authority's audited Financial Statements for FY95 and FY96, (ii) the report (whether prepared by the Authority's employees, agents or consultants) to the Authority, including the Executive Director and/or the Board of Directors, regarding any need to increase the Authority's maritime revenues through adjustment to the Authority's Maritime Tariff Rates, including any update to such report; and (iii) any non-privileged materials provided to the Authority's Board in connection with the Board's consideration of any such proposed increases; and**
- (11) forego and refrain from prosecuting, intervening in, joining in or instituting any lawsuit or proceeding against the Signatories that involves the Authority Claims, or the Authority's Other Users Claims.

No provision of this Agreement or this Paragraph 4.A shall be deemed to waive or settle any action or claim by the Authority against any non-signatory to this Agreement, or to enforce compliance with the terms of this Agreement and collect the amounts agreed to be due to the Authority hereunder.

B. In exchange for the credits and other considerations to be provided by the Authority under Paragraph 4.A of this Settlement Agreement, the Signatories agree to:

- (1) settle all claims which the Association and the FCCA have asserted, or which any of the Signatories could have asserted, against the Authority with respect to the Authority Resolutions, tariffs, rates, and charges which are the subject of the Association Claims and the Other Users Claims;
- (2) pay to the Authority the Settlement Payment at the times, and calculated in the manner, set forth in Paragraph 7.A below, including all adjustments mutually agreed or ultimately determined due thereto per Paragraph 14.A below;
- (3) pay to the Authority during the Waiting Period the amounts set forth in Paragraph 3.G above, and, after the effective date of the New Tariff, the amounts invoiced by the Authority in accordance therewith;
- (4) as provided in Paragraphs 10.A and 10.B below, appoint the Association's representatives to the Joint Tariff Committee and the Joint Land Committee; and
- (5) forego and refrain from prosecuting, intervening in, joining in or instituting any lawsuit or proceeding against the Authority in any way arising out of or relating to the Authority Resolutions, tariffs, rates and charges which are the subject of the Association Claims and the Other Users Claims, as the case may be.

C. The Signatories agree to accept the credits and other consideration provided by the Authority under Paragraph 4.A(1) to (11) of this Settlement Agreement in full, final and complete accord and satisfaction and settlement of all claims or counterclaims asserted, or which could have been asserted, by the Association Members or the Other Users against the Authority in any way arising out of or relating to the Authority Resolutions, tariffs, rates and charges which are the subject of the Association Claims, and the Other Users Claims, as the case may be, except as reserved in Paragraph 18 below.

D. The Authority agrees to accept the Settlement Payment and other consideration provided by the Signatories to the Authority under Paragraphs 4.B(1) to (5) and 15 of this Settlement Agreement in full, final and complete accord and satisfaction and settlement of all claims and counterclaims asserted, or that could have been asserted, by the Authority against the Signatories in any way arising out of or relating to the Revised Tariff, the Authority's Resolutions, or the increased Maritime Tariff Rates which are the subject of the Authority Claims and the Authority's Other Users Claims, except as reserved in Paragraph 18 below.



5. CLOSING.

A. The closing of this Settlement Agreement (the "Closing") shall occur at the offices of Fiddler, González & Rodríguez, located at:

Chase Manhattan Bank Building
Sixth Floor
Muñoz Rivera Avenue
San Juan, Puerto Rico

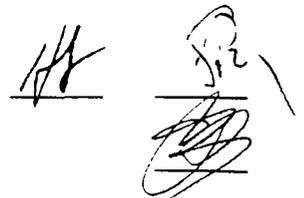
or at such other location as is mutually acceptable to the parties, and shall be held, unless extended by mutual agreement of the parties hereto, ten "Business Days" after the date on which the ALJ's Favorable Decision becomes final (the "Closing Date"). As used in this Agreement, "Business Day(s)" shall mean any day that is neither a Saturday nor a Sunday, nor any other day on which commercial banking institutions in San Juan, Puerto Rico, are authorized or obligated by law or executive order to be closed. All funds and documents to be delivered at the Closing shall be held in escrow pending the consummation of all the transactions contemplated at the Closing.

B. The execution of this Settlement Agreement by each Other User shall occur at or after the Closing, at such location and time that the Authority and each such Other User may agree (the "Other Users' Closings"). The Other Users' Closings may take place concurrent with the Closing or separately.

6. CONDITIONS TO CLOSING.

A. The obligation of the Signatories to effect this Settlement Agreement shall be subject to the fulfillment, at or prior to the Closing, by the Authority of each of the following conditions, except to the extent any such condition is waived, in whole or in part, in writing by the Association:

- (1) The representations and warranties of the Authority contained in Paragraph 11 hereof shall be true and correct in all material respects as of the date of this Settlement Agreement and as of the Closing Date, and the Association, on behalf of the other Signatories, shall have received a certificate to that effect executed by an authorized officer of the Authority dated the Closing Date; and
- (2) The Authority shall have delivered the following to the Association:
 - (i) the Settlement Agreement Credit evidenced by an Authority's statement to each of the Association Members, as the case may be;



- (ii) certified copies of the resolutions adopted by the Authority's Board of Directors authorizing the execution and delivery of this Settlement Agreement and the consummation of the transactions contemplated hereby, including the adoption of the New Tariff;
- (iii) a certificate of the Secretary or any Assistant Secretary of the Authority as to the incumbency and specimen signatures of the officers of the Authority authorized to execute this Settlement Agreement and the other documents and certificates necessary to consummate the transactions contemplated hereby; and
- (iv) receipts for the Settlement Payments.

B. The obligation of the Authority to effect this Settlement Agreement shall be subject to the fulfillment at or prior to the Closing by the Signatories of each of the following conditions, except to the extent any such condition is waived, in whole or in part, in writing by the Authority:

- (1) The representations and warranties of the Signatories contained in Paragraph 12 hereof shall be true and correct in all material respects as of the date of this Settlement Agreement and as of the Closing Date, and the Authority shall have received certificates to that effect executed respectively by a duly authorized officer of the Association and of the FCCA, dated as of the Closing Date; and
- (2) **The Signatories shall have delivered or cause to have been delivered the following to the Authority:**
 - (i) the Settlement Payments, as provided in Paragraph 7.A, reduced by any applicable Settlement Agreement Credit, if any, to which the Association Member or each Other User may be entitled;
 - (ii) receipts for the Settlement Agreement Credit;
 - (iii) certified copies of resolutions adopted by the Board of Directors or the Board's Executive Committee of the Association authorizing the execution and delivery of this Settlement Agreement and the consummation of the transactions contemplated hereby;
 - (iv) a certificate of the Secretary or any Assistant Secretary of the Association as to the incumbency and specimen signatures of the officers of the Association authorized to execute this Settlement Agreement and the other documents and certificates necessary to consummate the transactions contemplated hereby; and

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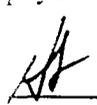

- (v) a duly executed signature page for each Association Member that is a party to this Settlement Agreement, and, with respect to each incorporated entity, a certification by such Member's corporate secretary as to the identity and authority of the individual executing the Agreement, as set forth in Exhibit C hereto.

C. The obligation of the Authority to effect this Settlement Agreement with the Other Users shall be subject to the completion of the Closing, as provided in Paragraph 5.A above, and the compliance by such Other Users with the provisions of Paragraph 15 below.

7. SETTLEMENT PAYMENT.

A. The Other Users and the Association Members that execute this Settlement Agreement shall calculate and pay, individually, to the Authority a Settlement Payment which is to be calculated in the manner and paid at the times set forth below:

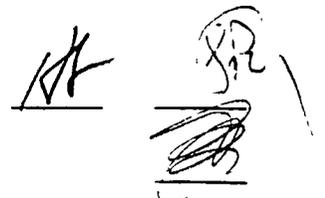
- (1) At their respective Closings, and for the Disputed Period, an amount equal to the difference between (i) the actual amounts paid by each Association Member or Other User directly to the Authority during the Disputed Period, and (ii) the corresponding amounts that would have been due to the Authority if the Base Tariff and Temporary Surcharge set forth in the New Tariff for FY96 had been in effect during that period, provided, however, that if the difference between those amounts is a negative number, then that amount will be a credit for such Association Member or Other User which will be used to reduce the amounts that such Association Member or Other User may owe to the Authority in the future. In support of such payment, each respective Association Member and Other User shall provide to the Authority, at the respective Closing, a written statement, certified by a duly authorized corporate officer, or other authorized individual in the case of an unincorporated entity, setting forth the appropriate calculations and reconciling the amount being paid (or credit claimed) to the amounts invoiced under each Authority invoice paid during the Disputed Period;
- (2) At their respective Closings, and with respect to the Waiting Period to the date on which the ALJ's Favorable Decision becomes final, an amount equal to any difference between (i) the actual amounts paid by each Association Member or Other User directly to the Authority during the Waiting Period to that date, and (ii) the corresponding amounts that would have been due to the Authority if the Base Tariff and Temporary Surcharge set forth in the New Tariff for FY96 had been in effect during that period (which difference should be zero if the respective Association Member or Other User has been making the increased payments contem-





plated under Paragraph 3.G above), provided, however, that if the difference between those amounts is a negative number, then that amount will be a credit for such Association Member or Other User which will be used to reduce the amounts that such Association Member or Other User may owe to the Authority in the future. To facilitate a reconciliation, and in support of any payment or credit request, each respective Association Member and Other User shall provide to the Authority with the payment a written statement, certified by a duly authorized corporate officer, or other authorized individual in the case of an unincorporated entity, setting forth the appropriate calculations and reconciling the amount being paid (or credit claimed) to the amounts invoiced under each Authority invoice paid during the subject portion of the Waiting Period:

- (3) Within 120 days after the effective date of the New Tariff, and with respect to the balance of the Waiting Period from the date that the ALJ's Favorable Decision becomes final to the effective date of the New Tariff, and with respect to any adjustments mutually agreed or determined due per the procedures set forth in Article 14.A below, as a result of review and any audit by the Authority of the certified statements presented at the Closing, an amount equal to any difference between (i) the actual amounts paid by each Association Member or Other User directly to the Authority with respect to any invoices issued under the Revised Tariff which are paid after the Closing Date, and (ii) the corresponding amounts that would have been due to the Authority if the Base Tariff and Temporary Surcharge set forth in the New Tariff for FY96 had been in effect during that period (which difference should be zero if the respective Association Member or Other User has been making the payments contemplated under Paragraphs 3.G and 15.C of this Agreement), plus any additional amounts agreed by the parties to be due as the result of any adjustments identified by either party as the result of further review or audit of the Association Member's account with the Authority and the certified statements provided under Paragraphs 7.A(1) & (2) above. If the result is a negative number, then that amount will be a credit for such Association Member or Other User which will be used to reduce the amounts that such Association Member or Other User may owe to the Authority in the future. In support of the foregoing, each respective Association Member and Other User shall provide to the Authority, no later than 120 days after the effective date of the New Tariff, a further written statement, certified by a duly authorized corporate officer, or other authorized individual in the case of an unincorporated entity, setting forth the appropriate calculations and reconciling the amount being paid (or credit claimed) to the amounts invoiced under each Authority invoice paid during the period after the date on which the ALJ's Favorable Decision become final, and including any other adjustments.

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B. The payments under Paragraphs 7.A above will be accepted by the Authority at the Closing (as to 7.A(1) & (2)) and thereafter (as to 7.A(3)) when accompanied by the certified reconciliation statements described above, and are subject to review and any necessary audit and subsequent adjustment claims by the Authority. All claims for adjustment must be submitted by the respective parties within twelve (12) months after the respective Closing dates. Any disputes with respect to any adjustment claim shall be resolved as set forth in Paragraph 14.A below.

8. TERMINATION

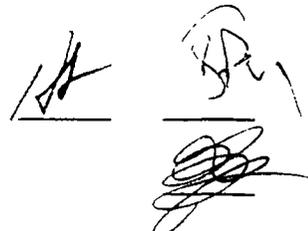
This Settlement Agreement shall become null and void, and the obligations of the parties hereunder shall terminate upon the exhaustion of all judicial review proceedings of a final determination other than an ALJ's Favorable Decision; provided, however, that, in the event of a final determination other than an ALJ's Favorable Decision, the provisions of Paragraphs 3.C, 3.E, and 3.G hereof shall survive and continue for a period of forty-five (45) calendar days from the service date of such final determination.

9. TERMINATION OF ESCROW ACCOUNT.

As of the Closing, the Association and the Association Members shall terminate all further use of the Escrow Account, and shall distribute the funds deposited therein to the respective Association Member or to the Authority according to the accounts of such Association Member with the Authority as determined under Paragraphs 7.A(1) & 7.A(2) above.

10. JOINT COMMITTEES.

A. The Authority and the Association will establish the Joint Tariff Committee, consisting of up to nine (9) members appointed by the Association, of which two members shall represent the cruise sector of the industry and shall be mutually acceptable to the Association and the FCCA, and up to an equivalent number of members appointed by the Authority, which Committee shall consider, draft, and, within four (4) months of the execution of this Agreement, submit to the Authority's Executive Director a proposed regulation, and a supporting explanatory report, establishing the procedures to govern future maritime tariff ratemaking, by the Authority. To the extent that the Committee members cannot agree on any issue, the members shall submit their respective positions and proposed language with respect to each such issue for the Board's consideration. The Authority's Board of Directors, in the exercise of its statutory powers, shall have the final decision as to the contents of any actual regulation (subject, of course, to any legal challenge thereto by any person, including the Association and the FCCA, and the final determination by a court or other entity with jurisdiction over the same).

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B. The Authority and the Association will establish the Joint Land Committee to consider and, within six months of the execution of this Agreement, issue a written recommendation to the Authority's Executive Director with respect to the possible redistribution of lands in the Puerto Nuevo Terminal area. The Joint Land Committee shall include representatives of all Association Members who are at the time leasing areas in the Puerto Nuevo Terminal area. Such recommendation shall take into consideration existing legal commitments and obligations, and the volumes of cargoes handled by the various maritime tenants and operators.

11. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY.

The Authority covenants, represents, and warrants to the Association that, as of the date of this Settlement Agreement:

- (i) The Authority is a public corporation created by Act No. 125 of May 7, 1942, as amended, is validly existing and in good standing under the laws of the Commonwealth of Puerto Rico, and has the corporate power and authority to enter into this Settlement Agreement and to consummate the transactions contemplated by this Agreement, which transactions have been duly authorized by all necessary corporate and other action. This Agreement has been duly executed and delivered on behalf of the Authority, and is the legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with the Agreement's terms.
- (ii) The Authority has not assigned, transferred, or otherwise conveyed to any other person, including any Puerto Rico governmental entity, agency, public corporation or instrumentality, the Authority's rights, claims, counterclaims, and causes of action involving, arising out of, or relating to the Authority Claims, and shall indemnify and hold harmless the Association, FCCA, the Signatory Association Members and Other Users from, and shall reimburse the Association, FCCA and the Signatory Association Members and Other Users, as the case may be, for, the reasonable costs or expenses, including attorney's fees, incurred in connection with the defense of any claims and demands that are based upon any such assignment, transfer, or other conveyance.



12. COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE ASSOCIATION, THE FCCA AND OTHER SIGNATORIES.

The Association, the FCCA, and, where pertinent, each signatory Association Member and Other User, covenant, represent and warrant to the Authority that:

- (i) The Association is a duly organized non-incorporated association, validly existing and in good standing under the laws of the Commonwealth of Puerto Rico; the FCCA is a non-profit corporation, validly existing and in good standing under the laws of the State of Florida; and each Signatory hereto has the power and authority to enter into this Settlement Agreement and to consummate the transactions contemplated by this Agreement, which transactions have been duly authorized by all necessary corporate and other action. This Agreement has been duly executed and delivered on behalf of the Signatories, and is the legal, valid and binding obligation of the Signatories enforceable against the Signatories in accordance with the Agreement's terms.
- (ii) The Signatories have not assigned, transferred, or otherwise conveyed to any other person their rights, claims, counterclaims, and causes of action involving, arising out of, or relating to the Authority Resolutions, tariffs, rates and charges which are the subject of the Association Claims and the Other Users Claims, as the case may be, and shall indemnify and hold harmless the Authority from, and shall reimburse the Authority for the **reasonable costs or expenses, including attorney's fees, incurred in connection with the defense of, all claims and demands that any third party may assert as an assignee or transferee of such rights, claims, or causes of action.**

13. DISCLAIMER OF LIABILITY OR VIOLATION OF LAW.

A. Anything herein to the contrary notwithstanding, it is expressly understood and agreed that neither this Settlement Agreement nor any FMC Order approving this Settlement Agreement shall constitute any evidence or an admission that the Association, the FCCA, the Association Members, the Other Users, or the Authority are guilty of the violations alleged in the Association's FMC Complaint, the Civil Complaint, and/or the Authority's defenses of such complaints, as a result of the establishment of the Escrow Fund, or are otherwise liable to each other or any other person under the Interstate Commerce Act, the Shipping Act, 1916, the Shipping Act of 1984, the Intercoastal Shipping Act, or any other act or decisional law, for the violations alleged in the FMC Complaint and the Civil Complaint. It is understood and agreed by the parties hereto that this Settlement Agreement is in full accord and satisfaction of disputed claims and is not an admission of liability or violation of law by any party hereto.




B. Similarly, in the event that this Settlement Agreement is disapproved, nothing contained herein shall be construed as a waiver of any of the parties' respective claims and legal positions, including specifically the Authority's position with respect to the legality of the Escrow Account and the Association Members' payments to such Escrow Account as set forth in the seventh "Whereas" clause of the Preamble to this Agreement.

14. ACCOUNTING ARBITRATION.

A. Any dispute between the parties, including the Other Users, relating to the computation of the Settlement Payment as to any signatory Association Member or Other User shall be:

FIRST: Discussed between the Authority and such Association Member or Other User to explore the possibility of reaching an agreement between them. If such consultation and negotiations fails, then:

SECOND: Referred for arbitration to an arbitrator to be mutually agreed upon and selected by the Authority and the respective individual Signatory from one of the Big Six accounting firms that is not the auditor for either of such parties (the "Accountant Arbitrator"). Each party will send to the Accountant Arbitrator a statement with a summary of the material facts regarding the issue(s) submitted to such Accountant Arbitrator and copies of documents supporting the party's submission. **The decision or award of the Accountant Arbitrator shall be final and binding upon each party. The decision or award shall conform to the evidence, and must follow generally accepted accounting principles. There shall be no consolidation of accounting issues with any third party.** The Accountant Arbitrator shall not have the power to award interest payment or any other penalty for money owed for the Disputed Period. Any costs and expenses incidental to this Accounting Arbitration shall be borne by the party against whom the decision is awarded, including a prorated payment according to the Accountant Arbitrator's decision.

B. The parties to this Agreement agree to pay all amounts ultimately determined due and owing under the terms of this Agreement, plus reasonable legal fees and interest from the date of any mutual agreement or arbitrator determination under the foregoing Subparagraph in the event any legal action has to be instituted to enforce this provision and collect any amounts determined to be due.

C. Any other issue, claim or dispute arising under this Settlement Agreement may be presented by the parties for adjudication to any tribunal or administrative forum that may have jurisdiction over the parties and the subject matter.





15. OTHER USERS.

A. Other Users may become a party to this Settlement Agreement, on or after the Closing Date, by executing this Settlement Agreement, and providing to the Authority at an Other Users' Closing (1) certified statements as described in Paragraph 7 above showing (a) the amounts paid by the Other User to the Authority during the Disputed Period and the Waiting Period to the date on which the ALJ's Favorable Decision becomes final, and (b) the amounts that would have been paid to the Authority if the Base Tariff and Temporary Surcharge set forth in the New Tariff for FY96 had been in effect during such periods; and (2) if the amounts computed under (1) above show an amount due to the Authority, that amount in payment. If the amount computed shows that such Other User is entitled to a credit, the Authority shall provide a credit in such amount as an offset against any further amounts that such Other User might owe the Authority.

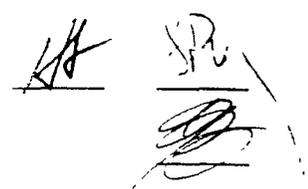
B. By becoming a party to this Settlement Agreement, each Other User thereby agrees to comply with, and shall be bound by, all of the covenants, agreements and undertakings contained in this Settlement Agreement, except the provisions regarding the Joint Committees contemplated under Paragraph 10 hereof, and thereby releases the Other Users Claims which such Other User might have against the Authority and its present and former officers, directors, employees, agents, legal representatives, successors and assigns as set forth in Paragraph 2 above.

C. Commencing as of the date of the respective Other Users' Closing, each Other User shall pay directly to the Authority, with respect to all then outstanding invoices and any further invoices which may be issued by the Authority under the Revised Tariff until the New Tariff becomes effective, the amounts which would be due had such invoices been calculated as if the Base Tariff and Temporary Surcharge set forth in the New Tariff for FY96 had been in effect.

D. After the Closing Date, the Authority shall send notice(s) to the Association informing of each Other User that may thereafter execute this Agreement.

16. APPLICABILITY OF THE REVISED TARIFF.

The Revised Tariff shall continue in effect until the New Tariff becomes effective after, and only if, the Settlement Agreement is approved by the FMC and the Closing is successfully completed, and all rates and charges thereunder shall continue in full force and effect until the New Tariff becomes effective, subject to the adjustments contained in the Settlement Payment applicable to the Signatories. Only those Association Members and Other Users which execute and become parties to this Agreement shall be entitled to share in the benefits of the Settlement Payment, and each other user of the Authority's Facilities and any member of the Association which does not execute and subscribe to this Agreement ("Non-Signatories") shall continue to be bound by and liable to the Authority for the full amount of the Maritime Tariff Rates presently in effect under the Revised Tariff until the New Tariff Effective Date. Such Non-

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Signatories shall not benefit from the provisions of this Settlement Agreement, including the Settlement Payments with respect to the Disputed Period and the Waiting Period, other than the prospective application of the New Tariff when it becomes effective.

17. GENERAL PROVISIONS.

A. The headings contained in this Settlement Agreement have been inserted for convenience of reference only, and neither such headings nor the placement of any term hereof under any particular heading form a part of this Settlement Agreement nor are they to be used in the construction or interpretation thereof.

B. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

C. Any waiver by any party of any breach of any term or condition of this Settlement Agreement shall not operate as a waiver of any other breach of such term or condition or of any other term or condition, nor shall any failure to enforce such provision hereof operate as a waiver of such provision or of any other provision hereof, nor constitute nor be deemed a waiver or release by any other party for anything arising out of, connected with, or based upon this Settlement Agreement.

D. This Settlement Agreement constitutes the entire agreement of each signatory party with respect to the subject matter hereof, and shall not be modified, altered, amended, or rescinded except in a writing signed by such signatory party and the Authority.

E. This Settlement Agreement shall be governed by the laws of the Commonwealth of Puerto Rico, and, where applicable, the Shipping Act, 1916, and the Shipping Act of 1984, in all respects, including matters of construction, validity, enforcement, and performance.

F. The respective rights and obligations of each signatory party to this Settlement Agreement are interdependent and non-severable. In the event that any provision or portion of this Settlement Agreement is not approved by the FMC, then the entire Settlement Agreement shall be deemed to be disapproved and shall become null, void, and ineffective in its entirety unless waived in writing by the parties hereto; provided, nevertheless, that Paragraphs 3.C, 3.E and 3.G of this Settlement Agreement shall survive such ineffectiveness for a term of 45 days after the date of any disapproval.

G. This Settlement Agreement shall be binding upon and inure to the benefit of each signatory party hereto and their respective successors, assigns and legal representatives.







H. All notices, demands, requests or other communications that may be required or may be given under this Settlement Agreement shall be in writing, and delivered by hand or by certified mail, return receipt requested, addressed as follows, or to such other addresses as may hereafter be provided in a writing so addressed:

If to the Authority:

Puerto Rico Ports Authority
G.P.O Box 362829
San Juan, Puerto Rico 00936-2829

Attn.: Dr. Herman Sulsona
Executive Director

with copies to:

Lcda. María De Mier
Martínez, Odell & Calabria
P.O. Box 998
Hato Rey, Puerto Rico 00919

and:

Hopewell H. Darneille III, Esq.
Verner, Liipfert, Bernhard,
McPherson and Hand, Chartered
901 15th Street, N.W.
Washington, D.C. 20005

If to the Association:

Puerto Rico Shipping Association
P.O. Box 6024
Old San Juan Station
San Juan, Puerto Rico 00905

Attn.: President

with a copy to:

Fiddler, González & Rodríguez
P.O. Box 363507
San Juan, Puerto Rico 00936-3507

Attn.: Lcdo. Fernando Bonilla

Handwritten signatures and initials in black ink, including a large signature and several smaller initials.

If to the FCCA:

Florida Caribbean Cruise Association
2701 Ponce de Leon Boulevard - Suite 203
Coral Gables, Florida 33134

Attn.: Executive Director

If to a particular Association Member or Other User, to their current invoicing address as shown in the records of the Authority.

18. RESERVED CLAIMS.

The following matters are not within the scope of, and are hereby expressly reserved and are not resolved by, this Settlement Agreement, and nothing in this Settlement Agreement shall limit the parties' ability to continue further settlement discussions with respect to, or to prosecute at the appropriate time and in the appropriate forum for their resolution:

- (i) Any claims by the Authority or any individual member of the Association or other user of the Authority's Facilities relating to amounts or credits asserted due with respect to specific shipments, properties or services insofar as such claims are not based upon the challenged differences in the amounts of the Authority's Maritime Tariff Rates and exclusive land rental rates per the Resolutions and tariffs at issue in the Covered Claims.
- (ii) Any claims relating to the deletion in the Revised Tariff of certain cruise line incentive provisions contained in earlier editions of such Tariff; and
- (iii) Any claims relating to the fees and charges which may be charged by the Authority with respect to the lease of office, preferential use land and warehouses or other facilities, and exclusive use warehouses.

IN WITNESS WHEREOF, the parties hereto execute this Settlement Agreement, consisting of a total of twenty-two (22) pages, including the following execution continuation page, plus three exhibits, each page of which bears the signatures or initials of the respective duly authorized representatives of the Authority, the Association, and the FCCA, and the attached execution pages by the individual Signatories, as of the date first written above.

ATTEST

PUERTO RICO PORTS AUTHORITY


Jesús Jiménez

By: 
Herman Sulsona
Executive Director

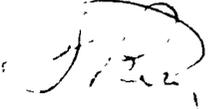


ATTEST



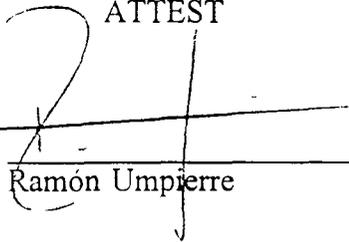
Iván Cintrón

PUERTO RICO SHIPPING ASSOCIATION

By: 

Fernando L. Rivera
President

ATTEST



Ramón Umpierre

FLORIDA CARIBBEAN CRUISE ASSOCIATION

By: 

José O. Busto

[NOTE: Separate pages will follow for the execution of each Association Member and Other User].







EXHIBIT A

MEMBERS OF THE ASSOCIATION AFFECTED BY TARIFF M-1-3

Crowley American Transport, Inc.
Celebrity Cruises
Luis Ayala Colón Sucrs., Inc.
Bravo Shipping
NPR, Inc. (D/B/A Navieras)
Seaboard Marine
Princess Cruises
Trailer Bridge Corporation
Catcor Services, Inc.
Antilles Shipping
Caribe Shipping Co., Inc.
Harbor Fuel Services, Inc.
International Shipping Co.
San Juan Mercantile
Costa Line Cruises
Sea Land Services, Inc.
Sea Barge Agency
Cunard Line, Ltd.
Island Stevedoring, Inc.
Sun Transport, Inc.
McAllister Brothers, Inc.
Inchcape Shipping Services
Scan Americana Agency
Royal Caribbean Cruises Line
Norwegian Cruises Line
Dolphin Cruises Line
Radisson Cruises Line
Continental Cruise Line

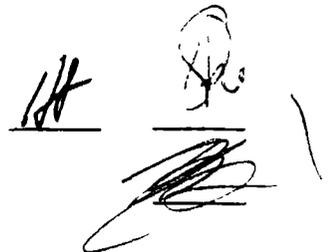
Handwritten initials and a signature in the bottom right corner of the page.

EXHIBIT B

MARITIME TARIFF RATES

Wharfage	FY96 Base Rate	FY96 Surcharge	FY97 Base Rate	FY97 Surcharge
Autos	5.3456	1.5763	5.6663	1.1066
General	1.3104	0.3864	1.3890	0.2713
Container	1.3104	0.3864	1.3890	0.2713
Empty Containers	5.9800	1.7633	6.3388	1.2379
Transship	1.0000	NONE	1.0000	NONE
Liquid	0.0155	0.0046	0.0164	0.0032
Dockage (GRT Days)				
Cargo (Off-Shore)	0.1283	0.0378	0.1360	0.0266
Cargo (Fuel)	0.0713	0.0210	0.0756	0.0148
Cargo (PR and VI)	0.0963	0.0284	0.1021	0.0199
Cargo (NOS)	0.1456	0.0429	0.1543	0.0301
Cruise Ships	0.0642	0.0189	0.0680	0.0133
Passengers	9.1100	NONE	9.6500	NONE
Harbors (GRT Days)	0.0400	NONE	0.0400	NONE



**PROFORMA CORPORATE AUTHORITY CERTIFICATION
TO BE PROVIDED PER AGREEMENT PARAGRAPH 6.B(2)(v)**

SECRETARIAL CERTIFICATE

I, the undersigned, Secretary of [Name of Association Member or Other User] organized and existing under the laws of _____ (the "Corporation"), do hereby certify that:

1. This Certificate is furnished pursuant to the Settlement Agreement dated March 8, 1996, among the Authority, the Puerto Rico Shipping Association ("Association"), the Florida Caribbean Cruise Association (the "FCCA"), and those other persons or entities that are not Association Members that executed the Settlement Agreement, being herein called the Settlement Agreement. Unless otherwise defined herein, capitalized terms used in this Certificate shall have the meanings set forth in the Settlement Agreement.

2. The following named individuals are elected officers of the Corporation, each holds the office of the Corporation set forth opposite his or her name and held such office as of the date of signing of the Settlement Agreement. The signature written opposite the name and title of each such officer is the officer's correct signature.

Name	Office	Signature
[Name]	[Title]	_____
[Name]	[Title]	_____

3. _____ and _____ have been duly authorized by all necessary corporate action to execute the Settlement Agreement on behalf of the Corporation, and, as so executed, the Settlement Agreement is legally binding against the Corporation.

4. The representations and warranties of the Corporation contained in Paragraph 12 of the Settlement Agreement are true and correct in all material respects as of the date of the Settlement Agreement and as of the Closing Date.

IN WITNESS WHEREOF, I have hereunto set my hand this ___th day of March, 1996.

[CORPORATE SEAL]

Name:
Title: Secretary

Handwritten signatures in black ink, including a signature that appears to be 'H' and another that appears to be 'J' or 'D', with a large scribble below them.

I, _____ [NAME] _____, _____ [OFFICER] _____ of the Corporation, do hereby certify that _____ [NAME OF CORPORATE SECRETARY] _____ holds the office of Secretary of the Corporation and held such office as of the date the forgoing Certification was executed, and the signature written above his or her name and title is his or her true and correct signature.

IN WITNESS WHEREOF, I have hereunto set my hand this __th day of March, 1996.

Name:
Title: